

State of Wisconsin



2013 Senate Bill 206

Date of enactment: **July 5, 2013**
Date of publication*: **July 6, 2013**

2013 WISCONSIN ACT 37

AN ACT *to repeal* 253.10 (3) (c) 1. g.; *to amend* 253.10 (3) (c) (intro.), 253.10 (3) (c) 5., 253.10 (3) (d) 1., 253.10 (3m) (a) (intro.), 253.10 (5) and 253.10 (6) (b); and *to create* 253.095, 253.10 (3) (c) 1. gm., 253.10 (3) (em), 253.10 (3g), 253.10 (6) (am) and 253.10 (6) (dm) of the statutes; **relating to:** requirements to perform abortions, requiring an ultrasound before informed consent for an abortion, and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 253.095 of the statutes is created to read:

253.095 Requirements to perform abortions. (1)

DEFINITION. In this section, "abortion" has the meaning given in s. 253.10 (2) (a).

(2) ADMITTING PRIVILEGES REQUIRED. No physician may perform an abortion, as defined in s. 253.10 (2) (a), unless he or she has admitting privileges in a hospital within 30 miles of the location where the abortion is to be performed.

(3) PENALTY. Any person who violates this section shall be required to forfeit not less than \$1,000 nor more than \$10,000. No penalty may be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.

(4) CIVIL REMEDIES. (a) Any of the following individuals may bring a claim for damages, including damages for personal injury and emotional and psychological distress, against a person who performs, or attempts to perform, an abortion in violation of this section:

1. A woman on whom an abortion is performed or attempted.

2. The father of the aborted unborn child or the unborn child that is attempted to be aborted.

3. Any grandparent of the aborted unborn child or the child that is attempted to be aborted.

(b) A person who has been awarded damages under par. (a) shall, in addition to any damages awarded under par. (a), be entitled to not less than \$1,000 nor more than \$10,000 in punitive damages for a violation that satisfies a standard under s. 895.043 (3).

(c) A conviction under sub. (3) is not a condition precedent to bringing an action, obtaining a judgment, or collecting the judgment under this subsection.

(d) Notwithstanding s. 814.04 (1), a person who recovers damages under par. (a) or (b) may also recover reasonable attorney fees incurred in connection with the action.

(e) A contract is not a defense to an action under this subsection.

(f) Nothing in this subsection limits the common law rights of a person that are not in conflict with sub. (2).

(5) CONFIDENTIALITY IN COURT PROCEEDINGS. (a) In every proceeding brought under this section, the court, upon motion or sua sponte, shall rule whether the identity of any woman upon whom an abortion was performed or induced or attempted to be performed or induced shall be kept confidential unless the woman waives confidentiality. If the court determines that a woman's identity should be kept confidential, the court shall issue orders

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. If the court issues an order to keep a woman's identity confidential, the court shall provide written findings explaining why the woman's identity should be kept confidential, why the order is essential to that end, how the order is narrowly tailored to its purpose, and why no reasonable less restrictive alternative exists.

(b) Any person, except for a public official, who brings an action under this section shall do so under a pseudonym unless the person obtains the written consent of the woman upon whom an abortion was performed or induced, or attempted to be performed or induced, in violation of this section.

(c) This section may not be construed to allow the identity of a plaintiff or a witness to be concealed from the defendant.

SECTION 2. 253.10 (3) (c) (intro.) of the statutes is amended to read:

253.10 (3) (c) *Informed consent.* (intro.) Except if a medical emergency exists and subject to sub. (3g), a woman's consent to an abortion is informed only if all of the following first take place:

SECTION 3. 253.10 (3) (c) 1. g. of the statutes is repealed.

SECTION 4. 253.10 (3) (c) 1. gm. of the statutes is created to read:

253.10 (3) (c) 1. gm. That the pregnant woman is required to obtain an ultrasound that meets the requirements under sub. (3g), if she has not already had an ultrasound that meets those requirements. The physician, or other qualified physician, shall provide to the pregnant woman a list of providers that perform an ultrasound at no cost to the woman, as described in par. (em) 1.

SECTION 5. 253.10 (3) (c) 5. of the statutes is amended to read:

253.10 (3) (c) 5. The woman certifies in writing on a form that the department shall provide, prior to performance or inducement of the abortion, that the information that is required under subds. 1. and 2. has been provided to her in the manner specified in subd. 3., that the ultrasound required under sub. (3g) has been performed or that requirement is waived under sub. (3m) (a), that she has been offered the information described in par. (d) and that all of her questions, as specified under subd. 4., have been answered in a satisfactory manner. The physician who is to perform or induce the abortion or the qualified person assisting the physician shall write on the certification form the name of the physician who is to perform or induce the abortion. The woman shall indicate on the certification form who provided the information to her and when it was provided and who performed the ultrasound and when it was performed, unless the ultrasound requirement is waived under sub. (3m) (a). If the ultra-

sound required under sub. (3g) was performed at a facility other than the facility where the physician who is to perform or induce the abortion is located, the woman shall provide to the physician who is to perform or induce the abortion the certification form described under sub. (3g) (d).

SECTION 6. 253.10 (3) (d) 1. of the statutes is amended to read:

253.10 (3) (d) 1. Geographically indexed materials that are designed to inform a woman about public and private agencies, including adoption agencies, and services that are available to provide information on family planning, as defined in s. 253.07 (1) (a), including natural family planning information, to provide ultrasound imaging services, to assist her if she has received a diagnosis that her unborn child has a disability or if her pregnancy is the result of sexual assault or incest and to assist her through pregnancy, upon childbirth and while the child is dependent. The materials shall include a comprehensive list of the agencies available, a description of the services that they offer and a description of the manner in which they may be contacted, including telephone numbers and addresses, or, at the option of the department, the materials shall include a toll-free, 24-hour telephone number that may be called to obtain an oral listing of available agencies and services in the locality of the caller and a description of the services that the agencies offer and the manner in which they may be contacted. The materials shall provide information on the availability of governmentally funded programs that serve pregnant women and children. Services identified for the woman shall include medical assistance for pregnant women and children under s. 49.47 (4) (am) and 49.471, the availability of family or medical leave under s. 103.10, the Wisconsin works program under ss. 49.141 to 49.161, child care services, child support laws and programs and the credit for expenses for household and dependent care and services necessary for gainful employment under section 21 of the Internal Revenue Code. The materials shall state that it is unlawful to perform an abortion for which consent has been coerced, that any physician who performs or induces an abortion without obtaining the woman's voluntary and informed consent is liable to her for damages in a civil action and is subject to a civil penalty, that the father of a child is liable for assistance in the support of the child, even in instances in which the father has offered to pay for an abortion, and that adoptive parents may pay the costs of prenatal care, childbirth and neonatal care. The materials shall include information, for a woman whose pregnancy is the result of sexual assault or incest, on legal protections available to the woman and her child if she wishes to oppose establishment of paternity or to terminate the father's parental rights. ~~The materials shall state that fetal ultrasound imaging and auscultation of fetal heart tone services are obtainable by pregnant women who wish to use them and~~

shall describe the services. The materials shall include information on services in the state that are available for victims or individuals at risk of domestic abuse.

SECTION 7. 253.10 (3) (em) of the statutes is created to read:

253.10 (3) (em) *Ultrasound materials and form.* 1. The department shall compile a list of facilities, including the names, addresses, and phone numbers, that provide ultrasounds at no cost. The department shall make this list available to the public and shall provide the list to every facility that performs or induces an abortion.

2. The department shall provide to every facility that performs ultrasounds at no cost a list of the requirements under sub. (3g).

3. Any facility that intends to perform ultrasounds on pregnant women who are seeking to have abortions performed or induced shall create a form on which a physician at that facility certifies that the requirements under sub. (3g) are satisfied and provides a date the requirements under sub. (3g) are satisfied.

SECTION 8. 253.10 (3g) of the statutes is created to read:

253.10 (3g) PERFORMANCE OF ULTRASOUND. (a) Except as provided under sub. (3m) and except in a medical emergency and before a person may perform or induce an abortion on a pregnant woman, the physician who is to perform or induce the abortion, or any physician requested by the pregnant woman, shall do all of the following, or shall arrange for a person who is qualified to perform an ultrasound to do all of the following:

1. Perform an obstetric ultrasound on the pregnant woman using whichever transducer the woman chooses after the options have been explained to her. A facility that offers ultrasounds at no cost to satisfy the requirements of this subsection shall have available transducers to perform both transabdominal and transvaginal ultrasounds.

2. Provide a simultaneous oral explanation to the pregnant woman during the ultrasound of what the ultrasound is depicting, including the presence and location of the unborn child within the uterus, the number of unborn children, and the occurrence of the death of an unborn child, if such a death has occurred.

3. Display the ultrasound images so that the pregnant woman may view them.

4. Provide to the pregnant woman a medical description of the ultrasound images, including the dimensions of the unborn child and a description of any external features and internal organs that are present and viewable on the image.

5. Provide a means for the pregnant woman to visualize any fetal heartbeat, if a heartbeat is detectable by the ultrasound transducer type chosen by the woman under subd. 1., and provide to the pregnant woman, in a manner understandable to a layperson, a simultaneous oral explanation.

(b) No person may require a pregnant woman to view the ultrasound images that are required to be displayed for and reviewed with her or to visualize any fetal heartbeat. No person, including the pregnant woman, may be subject to any penalty if the pregnant woman declines to view the displayed ultrasound images or to visualize any fetal heartbeat.

(c) The requirement under par. (a) does not apply if the physician, in a writing that is placed in the woman's medical record, certifies that the pregnant woman is undergoing a medical emergency and certifies the medical condition that constitutes the medical emergency.

(d) A physician other than a physician at the facility where the abortion is to be performed or induced may do or arrange for the performance of the activities necessary to satisfy the requirements of this subsection. A physician at a location other than the facility where the abortion is to be performed or induced who does or arranges for the performance of the activities under par. (a) shall certify on a form described under sub. (3) (em) 3. that the requirements of this subsection are satisfied and shall provide the date on which the requirements are satisfied.

(e) No person who has been convicted of a crime under ss. 940.22, 940.225, 948.02, 948.025, or 948.05 to 948.14 may perform any ultrasound that is required under this subsection.

SECTION 9. 253.10 (3m) (a) (intro.) of the statutes is amended to read:

253.10 (3m) (a) (intro.) A woman seeking an abortion may waive the 24-hour period required under sub. (3) (c) 1. (intro.) and L. and 2. (intro.) and may waive all of the requirements under sub. (3g) if all of the following are first done:

SECTION 10. 253.10 (5) of the statutes is amended to read:

253.10 (5) PENALTY. Any person who violates sub. (3) (3g) (a), or (3m) (a) 2. or (b) 2. shall be required to forfeit not less than \$1,000 nor more than \$10,000. No penalty may be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.

SECTION 11. 253.10 (6) (am) of the statutes is created to read:

253.10 (6) (am) Any of the following individuals may bring a claim for damages, including damages for personal injury and emotional and psychological distress, against a person who attempts to perform or performs an abortion in violation of sub. (3g):

1. A woman on whom an abortion is performed or attempted.

2. The father of the aborted unborn child or the unborn child that is attempted to be aborted.

3. Any grandparent of the aborted unborn child or the unborn child that is attempted to be aborted.

SECTION 12. 253.10 (6) (b) of the statutes is amended to read:

2013 Wisconsin Act 37

2013 Senate Bill 206

253.10 (6) (b) A person who has been awarded damages under par. (a) or (am) shall, in addition to any damages awarded under par. (a) or (am), be entitled to not less than \$1,000 nor more than \$10,000 in punitive damages for a violation that satisfies a standard under s. 895.043 (3).

SECTION 13. 253.10 (6) (dm) of the statutes is created to read:

253.10 (6) (dm) A district attorney or the attorney general may institute an action for injunctive relief against any person who performs or attempts to perform an abortion in violation of sub. (3g).
